IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2109 OF 2005

The Oriental Insurance Company Ltd. .. Appellant (orig. Opponent)

v/s.

Smt.Sushila K. Kaul & ors. .. .. Respondents (Or.Applicants)

Mr.Pankaj Das i/by Mr.Rajesh Datar for Appellant.

Mr.T.J. Mendon for Respondents.

CORAM : SMT.ROSHAN DALVI, J.

Dated : 27th June, 2007

P.C. :

1. The order dated 26.6.2007 dismissing the Appeal for default is set aside. Appeal is restored to file. Heard both the Advocates.

2. In this case, the Appellant-Insurance Company has admittedly not filed an application under Section 170 of the Motor Vehicles Act, 1988 in the trial Court. As per the

judgment in the case of **Shankarayya & anr. vs. United India Insurance Co. Ltd. & anr. reported in 1998 ACJ 513** and in the case of **National Insurance Co. Ltd. vs. Nicolletta Rohtagi & ors. reported in 2002 ACJ 195**. If the Insurance Company does not file an application under Section 173, it will have no right to appeal and cannot challenge the Award passed on merits. Hence, the Appeal is dismissed.

3. In view of the dismissal of the Appeal, nothing survives in the Civil Application taken therein and the same is disposed of as infructuous.

(ROSHAN DALVI, J.)